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JELLY BELLY CANDY COMPANY

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

JELLY BELLY CANDY COMPANY, Plaintiff, v. KESS GLOBAL INC. and DOES 1 through 100, inclusive, Defendants.	Civil Action No. 3:17-cv-04155 **COMPLAINT FOR:** **(1) FEDERAL TRADEMARK INFRINGEMENT (15 U.S.C. § 1114);** **(2) FEDERAL UNFAIR COMPETITION, FALSE DESIGNATION OF ORIGIN, AND TRADE DRESS INFRINGEMENT (15 U.S.C. § 1125(a));** **(3) FEDERAL TRADEMARK AND TRADE DRESS DILUTION (15 U.S.C. § 1125(c));** **(4) COMMON LAW UNFAIR COMPETITION;** **(5) STATE TRADEMARK DILUTION (CAL. BUS. & PROF. CODE §§ 14247 and 14250);** **(6) UNFAIR COMPETITION (CAL. BUS. & PROF. CODE § 17200); AND** **(7) FEDERAL TRADEMARK COUNTERFEITING (15 U.S.C. § 1114)** **DEMAND FOR JURY TRIAL**

Plaintiff Jelly Belly Candy Company ("Jelly Belly") brings this complaint against Kess Global Inc. and DOES 1 through 100, inclusive (collectively "Defendants"), and alleges as follows:

I. NATURE OF THE ACTION

1. This is an action for: (1) federal trademark infringement under 15 U.S.C. § 1114; (2) federal unfair competition, false designation of origin, and trade dress infringement under 15 U.S.C. § 1125(a); (3) federal trademark and trade dress dilution under 15 U.S.C. § 1125(c); (4) common law unfair competition; (5) state trademark dilution under California Business and Professions Code §§ 14247 and 14250; (6) unfair competition under California Business and Professions Code §§ 17200, *et seq.*; and (7) federal trademark counterfeiting under 15 U.S.C. § 1114.

II. PARTIES

2. Jelly Belly is a California corporation with its principal place of business at One Jelly Belly Lane, Fairfield, CA, 94533. Jelly Belly is a widely recognized producer, distributer, and/or seller of gourmet jelly beans and other candy, as well as various other products bearing Jelly Belly's trademarks. Such other products include, but are not limited to, pillows, bedsheets, clothing, and art.

3. On information and belief, Defendant Kess Global Inc. is an Illinois corporation with its principal place of business at 3540 Seagate Way, Oceanside, CA 92056. Defendant Kess Global Inc. engages in the retail sale of, among other things, home furnishings and décor. Defendant Kess Global Inc. does business within the United States and the State of California, including in this Judicial District, and purposefully targets and markets the infringing products to United States and California consumers, including consumers in this Judicial District.

4. Plaintiff does not know the true names and capacities of the Defendants sued herein as DOES 1 through 100, inclusive, and therefore sues these Defendants by such fictitious names. Plaintiff will amend this Complaint to allege their true names and capacities when ascertained.

III. JURISDICTION

5. This Court has original subject-matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1338, and 15 U.S.C. §§ 1116 and 1121. The Court has supplemental jurisdiction over the state law claims asserted herein under 28 U.S.C. §§ 1338(b) and 1367(a) because those claims are so related to the federal claims that they form part of the same case or controversy and derive from a common nucleus of operative facts.

6. Venue is proper in this Judicial District pursuant to 28 U.S.C. § 1391 at least because: (a) it is where a substantial part of the events giving rise to the claims asserted herein occurred; and (b) Defendants were and are subject to personal jurisdiction in this District at the time the action was commenced.

7. This Court has personal jurisdiction over Defendants because they have a continuous, systematic, and substantial presence within this Judicial District by selling and offering for sale infringing and dilutive products in this Judicial District, and by committing acts of trademark infringement, trademark counterfeiting, false designation of origin, trademark dilution, trade dress infringement, trade dress dilution, and unfair competition in this Judicial District, including, but not limited to, using infringing and dilutive marks, designs, and trade dress in connection with the sale and offering for sale of products to customers in this Judicial District, and/or selling into the stream of commerce knowing such products would be sold in California and this Judicial District, and/or otherwise have purposefully directed activities toward this Judicial District related to the sale of infringing and dilutive goods, which acts form a substantial part of the events or omissions giving rise to Jelly Belly's claims.

IV. INTRADISTRICT ASSIGNMENT

8. Intradistrict assignment to any division of the Northern District is proper under Local Rule 3-2(c) and the Court's Assignment Plan as an "Intellectual Property Action."

V. FACTUAL BACKGROUND

9. Jelly Belly advertises, markets, manufactures, and sells gourmet jelly beans and other candy, as well as various other non-candy products, throughout the United States

and internationally. Examples of non-candy products Jelly Belly advertises, markets, manufactures, licenses, and/or sells include pillows, bed sheets, clothing, and art.

10. Since at least as early as 1976, and prior to Defendants' acts complained of herein, Jelly Belly has used the mark JELLY BELLY on packaging and advertising pieces for candy and on candy that have been sold in interstate and international commerce. In addition, for a long time, and prior to Defendants' acts complained of herein, Jelly Belly has used the mark JELLY BELLY on packaging, advertising pieces and numerous other products that have been sold in interstate and international commerce. By way of example, since at least as early as 1979, and prior to Defendants' acts complained of herein, Jelly Belly has used the mark JELLY BELLY on packaging and advertising for clothing that has been sold in interstate and international commerce. Moreover, since at least as early as 2007, and prior to Defendants' acts complained of herein, Jelly Belly has used the mark JELLY BELLY on packaging and advertising for pillows that have been sold in interstate and international commerce. Based on this widespread use, Jelly Belly has established substantial goodwill in the JELLY BELLY mark and this mark has acquired and continues to have secondary meaning to consumers and potential customers, in that consumers and potential customers have come to associate the JELLY BELLY mark with Jelly Belly. In addition, this widespread use has resulted in the JELLY BELLY mark becoming famous worldwide. Due to the foregoing, Jelly Belly has obtained common law trademark rights in the JELLY BELLY mark.

11. Jelly Belly owns U.S. Trademark Registration Number 1,132,333 for the mark JELLY BELLY covering "CANDY," in Class 30. This registration issued on April 1, 1980. Jelly Belly has complied with the requirements of 15 U.S.C. § 1065 and, as a result, this registration has become incontestable. A true and correct copy of this registration is attached hereto as Exhibit A.

12. Jelly Belly owns U.S. Trademark Registration Number 1,203,786 for a design mark with the mark JELLY BELLY covering "Candy-Namely, Jelly Beans," in Class 30. This registration issued on August 3, 1982. Jelly Belly has complied with the requirements of

15 U.S.C. § 1065 and, as a result, this registration has become incontestable. A true and correct copy of this registration is attached hereto as Exhibit B.

13. Jelly Belly owns U.S. Trademark Registration Number 1,232,091 for a design mark with the mark JELLY BELLY covering "Candy-Namely, Jelly Beans," in Class 30. This registration issued on March 22, 1983. Jelly Belly has complied with the requirements of 15 U.S.C. § 1065 and, as a result, this registration has become incontestable. A true and correct copy of this registration is attached hereto as Exhibit C.

14. Jelly Belly owns U.S. Trademark Registration Number 2,695,195 for the stylized mark JELLY BELLY covering, among other things, "candy," in Class 30, and "hats and t-shirts," in Class 25. This registration issued on March 11, 2003. Jelly Belly has complied with the requirements of 15 U.S.C. § 1065 and, as a result, this registration has become incontestable. A true and correct copy of this registration is attached hereto as Exhibit D.

15. Jelly Belly owns U.S. Trademark Registration Number 2,836,178 for a design mark with the mark JELLY BELLY covering "candy," in Class 30. This registration issued on April 27, 2004. Jelly Belly has complied with the requirements of 15 U.S.C. § 1065 and, as a result, this registration has become incontestable. A true and correct copy of this registration is attached hereto as Exhibit E.

16. Jelly Belly owns U.S. Trademark Registration Number 3,732,866 for a design mark with the mark JELLY BELLY covering, among other things, "baby books, children's activity books, children's books, children's board books, [and] decorative stickers," in Class 16, and "knit shirts, cyclists' jerseys," in Class 25. This registration issued on December 29, 2009. Jelly Belly has complied with the requirements of 15 U.S.C. § 1065 and, as a result, this registration has become incontestable. A true and correct copy of this registration is attached hereto as Exhibit F.

17. Jelly Belly owns U.S. Trademark Registration Number 3,732,867 for the stylized mark JELLY BELLY covering, among other things, "baby books, children's activity books, children's books, children's board books, [and] decorative stickers," in Class 16, and

"knit shirts, cyclists' jerseys, jerseys, infant wear, infant and toddler one-piece clothing, infant sleepers, flip flops, [and] slippers," in Class 25. This registration issued on December 29, 2009. Jelly Belly has complied with the requirements of 15 U.S.C. § 1065 and, as a result, this registration has become incontestable. A true and correct copy of this registration is attached hereto as Exhibit G.

18. Jelly Belly owns U.S. Trademark Registration Number 3,735,357 for the mark JELLY BELLY covering, among other things, "baby books, children's activity books, children's books, children's board books, [and] decorative stickers," in Class 16, and "knit shirts, cyclists' jerseys, jerseys, infant wear, infant and toddler one-piece clothing, infant sleepers, flip flops, [and] slippers," in Class 25. This registration issued on January 5, 2010. Jelly Belly has complied with the requirements of 15 U.S.C. § 1065 and, as a result, this registration has become incontestable. A true and correct copy of this registration is attached hereto as Exhibit H.

19. Jelly Belly owns U.S. Trademark Registration Number 3,754,751 for the stylized mark JELLY BELLY covering "Candy," in Class 30. This registration issued on March 2, 2010. Jelly Belly has complied with the requirements of 15 U.S.C. § 1065 and, as a result, this registration has become incontestable. A true and correct copy of this registration is attached hereto as Exhibit I.

20. Jelly Belly owns U.S. Trademark Registration Number 4,773,681 for the mark JELLY BELLY covering, among other things, "Footwear," in Class 25. This registration issued on July 14, 2015. A true and correct copy of this registration is attached hereto as Exhibit J.

21. Jelly Belly owns U.S. Trademark Registration Number 4,852,501 for the mark JELLY BELLY covering "Pillows" in Class 20. This registration issued on November 10, 2015. A true and correct copy of this registration is attached hereto as Exhibit K.

22. Jelly Belly owns California Trademark Registration Number 64,039 for the mark JELLY BELLY and Design, which issued on July 10, 1981, and which has been

renewed to July 10, 2021 as California Trademark Renewal Registration Number 104,651. A true and correct copy of the renewal certificate is attached hereto as Exhibit L.

23. Jelly Belly owns California Trademark Registration Number 58,971 for the mark JELLY BELLY, which issued on January 9, 1979, and which has been renewed to January 9, 2019 as California Trademark Renewal Registration Number 19,975. A true and correct copy of the renewal certificate is attached hereto as Exhibit M.

24. Jelly Belly's marks for products with the JELLY BELLY component constitute a family of similar marks. Hereinafter, Jelly Belly collectively refers to the marks as "The JELLY BELLY Marks." The JELLY BELLY Marks include, but are not limited to, the marks that are the subject of U.S. Trademark Registration Numbers 1,132,333; 1,203,786; 1,232,091; 2,695,195; 2,836,178; 3,732,866; 3,732,867; 3,735,357; 3,754,751; 4,773,681; and 4,852,501.

25. Since 1981, and prior to Defendants' acts complained of herein, Jelly Belly has continuously and extensively used a distinctive nonfunctional trade dress ("JELLY BELLY Trade Dress") in commerce in connection with its jelly beans. That trade dress consists of any combination of two or more of the following characteristics of Jelly Belly's jelly beans: (1) they are a smaller size compared to traditional jelly beans; (2) they have a "kidney bean" shape; and (3) there is a speckled color pattern on a significant portion of beans in any given package. Based on this widespread use, Jelly Belly has established substantial goodwill in the JELLY BELLY Trade Dress, and the JELLY BELLY Trade Dress has acquired and continues to have secondary meaning. Due to the foregoing, Jelly Belly has acquired common law rights in the JELLY BELLY Trade Dress.

26. On information and belief, Defendants sell and distribute various unauthorized home furnishings and décor bearing one or more of the JELLY BELLY Marks and/or the JELLY BELLY Trade Dress (hereinafter the "Accused Products") on the internet, in this Judicial District, and elsewhere. For example, on information and belief, Defendants sell and distribute the Accused Products that include pet accessories, doormats, blankets, notebooks, exercise mats, rugs, clocks, coasters, curtains, shower curtains, placemats, cutting boards,

comforters, bath mats, pillows, duvet covers and sets, posters, and aprons bearing one or more of the JELLY BELLY Marks and/or the JELLY BELLY Trade Dress. Defendants sell and distribute the Accused Products throughout the U.S., including through online retailers such as Walmart.com, Amazon.com, Jet.com, Houzz.com, Hayneedle.com, Patiobloom.com, and Overstock.com. True and correct copies of webpages on which accused pillows are being offered for sale in this Judicial District on Walmart.com, Amazon.com, Houzz.com, Hayneedle.com, Jet.com, and Patiobloom.com are attached hereto as Exhibits N-S, respectively. A true and correct copy of the webpage on which an accused duvet cover is offered for sale in this Judicial District on Houzz.com is attached hereto as Exhibit T. A true and correct copy of the webpage on which an accused metal "art panel" is offered for sale in this Judicial District on Houzz.com is attached hereto as Exhibit U. A true and correct copy of the webpage on which an accused apron is offered for sale in this Judicial District on Overstock.com is attached hereto as Exhibit V. On information and belief, the advertising and packaging for the Accused Products, as well as the Accused Products themselves, bear marks that are identical to, substantially indistinguishable from, colorable imitations of, and/or confusingly similar to one or more of The JELLY BELLY Marks, including at least one or more of the marks that are the subject of U.S. Trademark Registration Numbers 1,132,333; 1,203,786; 1,232,091; 2,695,195; 2,836,178; 3,732,866; 3,732,867; 3,735,357; 3,754,751; 4,773,681; and 4,852,501 and/or the JELLY BELLY Trade Dress.

27. Defendants' use of the mark JELLY BELLY on and in connection with the Accused Products is confusingly similar to one or more of The JELLY BELLY Marks, and is likely to confuse consumers as to the relationship or origin of Jelly Belly's and Defendants' goods. Defendants' use of images of jelly beans on and in connection with the Accused Products is confusingly similar to the JELLY BELLY Trade Dress, and is likely to confuse consumers as to the relationship or origin of Jelly Belly's and Defendants' goods. Jelly Belly will suffer substantial loss of goodwill and reputation unless and until Defendants are enjoined from the wrongful actions complained of herein.

28. On June 27, 2017, Jelly Belly sent a letter to Defendant Kess Global Inc. regarding the Accused Products. In its letter, Jelly Belly demanded that Defendant Kess Global Inc. cease and desist any use of any of The JELLY BELLY Marks, the term "JELLY BELLY," or any confusingly similar terms, and specifically identified the marks that are the subject of U.S. Trademark Registration Numbers 2,695,195, 4,773,681, and 4,85,201 as examples of marks Jelly Belly owns. Jelly Belly also informed Defendant Kess Global Inc. that Jelly Belly's "JELLY BELLY trademark is a very well-known mark that has developed substantial goodwill throughout the world as a result of [Jelly Belly's] promotion of its products and brands."

29. Defendant Kess Global Inc. has yet to respond to Jelly Belly's June 27, 2017 correspondence. Moreover, Defendants continue to use one or more of The JELLY BELLY Marks and/or the JELLY BELLY Trade Dress in the advertising and packaging of the Accused Products and on the Accused Products themselves.

VI. FIRST CLAIM FOR RELIEF

(Federal Trademark Infringement Under 15 U.S.C. § 1114)

30. Jelly Belly hereby repeats, realleges, and incorporates by reference Paragraphs 1-29 of this Complaint as though fully set forth herein.

31. This is a claim for trademark infringement arising under 15 U.S.C. § 1114.

32. Jelly Belly owns valid and enforceable federally registered trademarks for The JELLY BELLY Marks, including at least the marks that are the subject of U.S. Trademark Registration Numbers 1,132,333; 1,203,786; 1,232,091; 2,695,195; 2,836,178; 3,732,866; 3,732,867; 3,735,357; 3,754,751; 4,773,681; and 4,852,501.

33. Defendants have used in commerce, without permission from Jelly Belly, colorable imitations, and/or confusingly similar marks to, one or more of The JELLY BELLY Marks, including those marks that are the subject of at least Jelly Belly's U.S. Trademark Registration Numbers 1,132,333; 1,203,786; 1,232,091; 2,695,195; 2,836,178; 3,732,866; 3,732,867; 3,735,357; 3,754,751; 4,773,681; and 4,852,501, in connection with the

distributing, selling, offering for sale, advertising, and/or promoting of the Accused Products. Such use is likely to cause confusion or mistake, or to deceive.

34. On information and belief, the activities of Defendants complained of herein constitute willful and intentional infringements of Jelly Belly's registered marks, and Defendants did so with the intent to trade upon Jelly Belly's reputation and goodwill by causing confusion and mistake among customers and the public and to deceive the public into believing that the Accused Products are associated with, sponsored by, originated from, or are approved by, Jelly Belly, when they are not.

35. On information and belief, Defendants had actual knowledge of Jelly Belly's ownership and prior use of one or more of The JELLY BELLY Marks, including at least the marks that are the subject of Trademark Registration Numbers 2,695,195, 4,773,681, and 4,852,501, which were specifically identified in Jelly Belly's June 27, 2017 cease and desist letter, and have willfully violated 15 U.S.C. § 1114. On information and belief, this is an exceptional case within the meaning of 15 U.S.C. § 1117.

36. Defendants, by their trademark infringement, have caused and, unless preliminarily and permanently restrained and enjoined by this Court, will continue to cause substantial, immediate, and irreparable injury to Jelly Belly's business, reputation, and goodwill for which Jelly Belly is without an adequate remedy at law.

37. In addition, as a direct and proximate result of Defendants' violation of 15 U.S.C. § 1114, Jelly Belly has suffered and is continuing to suffer injury, loss and damages in an amount to be determined at trial, and is entitled to recover monetary damages, attorneys' fees, and costs, and to disgorgement of Defendants' unlawful gains and profits.

VII. SECOND CLAIM FOR RELIEF

(Federal Unfair Competition, False Designation of Origin, and Trade Dress Infringement Under 15 U.S.C. § 1125(a))

38. Jelly Belly hereby repeats, realleges, and incorporates by reference Paragraphs 1-37 of this Complaint as though fully set forth herein.

39. This is an action for unfair competition, false designation of origin, and trade dress infringement arising under 15 U.S.C. § 1125(a).

40. Defendants' unlawful use of one or more of The JELLY BELLY Marks, including at least the marks that are the subject of U.S. Trademark Registration Numbers 1,132,333; 1,203,786; 1,232,091; 2,695,195; 2,836,178; 3,732,866; 3,732,867; 3,735,357; 3,754,751; 4,773,681; and 4,852,501, and/or its unlawful use of the JELLY BELLY Trade Dress constitute false and misleading designations of origin and false and misleading representations of facts, which: (1) are likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of Defendants with Jelly Belly, or as to the origin, sponsorship, or approval of Defendants' goods or commercial activities by Jelly Belly; and/or (2) misrepresent the nature, characteristics, or qualities of Defendants' goods, services, or commercial activities.

41. On information and belief, Defendants intend to trade upon Jelly Belly's reputation and goodwill by causing confusion and mistake among customers and the public and to deceive the public into believing that the Accused Products are associated with, sponsored by, or approved by Jelly Belly, when they are not.

42. On information and belief, Defendants had actual knowledge of Jelly Belly's ownership and prior use of one or more of The JELLY BELLY Marks and the JELLY BELLY Trade Dress, including at least the marks that are the subject of U.S. Trademark Registration Numbers 2,695,195, 4,773,681, and 4,852,501, which were specifically identified in Jelly Belly's June 27, 2017 cease and desist letter, and without the consent of Jelly Belly, willfully violated 15 U.S.C. § 1125(a).

43. Defendants, by their intentional and willful violation of 15 U.S.C. § 1125(a), have caused and, unless preliminarily and permanently restrained and enjoined by this Court, will continue to cause substantial, immediate, and irreparable injury to Jelly Belly's business, reputation, and goodwill for which Jelly Belly is without an adequate remedy at law.

44. In addition, as a direct and proximate result of Defendants' willful and intentional violation of 15 U.S.C. § 1125(a), Jelly Belly has suffered and is continuing to

suffer injury, loss and damages in an amount to be determined at trial, and is entitled to recover monetary damages, attorneys' fees, and costs, and to disgorgement of Defendants' unlawful gains and profits.

VIII. THIRD CLAIM FOR RELIEF

(Federal Trademark and Trade Dress Dilution Under 15 U.S.C. § 1125(c))

45. Jelly Belly hereby repeats, realleges, and incorporates by reference Paragraphs 1-44 of this Complaint as though fully set forth herein.

46. This is an action for federal trademark and trade dress dilution arising under 15 U.S.C. § 1125(c).

47. Products sold bearing the JELLY BELLY Trade Dress and/or The JELLY BELLY Marks, including at least the marks that are the subject of U.S. Trademark Registration Numbers 1,132,333; 1,203,786; 1,232,091; 2,695,195; 2,836,178; 3,732,866; 3,732,867; 3,735,357; 3,754,751; 4,773,681; and 4,852,501, have been widely advertised, promoted, and distributed to the purchasing public throughout the United States and the world. By virtue of the wide renown acquired by The JELLY BELLY Marks and the JELLY BELLY Trade Dress, coupled with the national and international distribution and extensive sale of various products distributed under The JELLY BELLY Marks and the JELLY BELLY Trade Dress, The JELLY BELLY Marks and the JELLY BELLY Trade Dress, including at least the marks that are the subject of U.S. Trademark Registration Numbers 1,132,333; 1,203,786; 1,232,091; 2,695,195; 2,836,178; 3,732,866; 3,732,867; 3,735,357; 3,754,751; 4,773,681; and 4,852,501, are distinctive and famous throughout the United States and internationally. After The JELLY BELLY Marks and the JELLY BELLY Trade Dress became famous, Defendants used and are using a mark and trade dress in their advertising and/or on their products that they sell that is identical, virtually identical, or similar, to one or more of The JELLY BELLY Marks and the JELLY BELLY Trade Dress, including at least the marks that are the subject of U.S. Trademark Registration Numbers 1,132,333; 1,203,786; 1,232,091; 2,695,195; 2,836,178; 3,732,866; 3,732,867; 3,735,357; 3,754,751; 4,773,681; and 4,852,501.

48. Defendants' unauthorized and commercial use of a mark that is identical, virtually identical, or similar, to one or more of The JELLY BELLY Marks, and a trade dress that is identical, virtually identical, or similar, to the JELLY BELLY Trade Dress, in connection with the advertisement, offering for sale, and sale of the Accused Products has caused, and is likely to continue causing, dilution of the distinctive quality of the JELLY BELLY Trade Dress and one or more of The JELLY BELLY Marks, including the marks that are the subject of U.S. Trademark Registration Numbers 1,132,333; 1,203,786; 1,232,091; 2,695,195; 2,836,178; 3,732,866; 3,732,867; 3,735,357; 3,754,751; 4,773,681; and 4,852,501.

49. Defendants' acts are likely to trade upon Jelly Belly's business, reputation, or goodwill, and to deprive Jelly Belly of the ability to control the use of the JELLY BELLY Trade Dress and The JELLY BELLY Marks, including the marks that are the subject of U.S. Trademark Registration Numbers 1,132,333; 1,203,786; 1,232,091; 2,695,195; 2,836,178; 3,732,866; 3,732,867; 3,735,357; 3,754,751; 4,773,681; and 4,852,501, and quality of products associated herewith.

50. On information and belief, Defendants acted with knowledge of the fame and reputation of the JELLY BELLY Trade Dress and The JELLY BELLY Marks, including at least the marks that are the subject of U.S. Trademark Registration Numbers 2,695,195, 4,773,681, and 4,852,501, which were specifically identified in Jelly Belly's June 27, 2017 cease and desist letter, and diluted The JELLY BELLY Marks and the JELLY BELLY Trade Dress willfully and deliberately with the intention to trade on the recognition of The JELLY BELLY Marks and the JELLY BELLY Trade Dress. On information and belief, this is an exceptional case within the meaning of 15 U.S.C. § 1117.

51. Defendants, by their violation of 15 U.S.C. § 1125(c), have caused and, unless preliminarily and permanently restrained and enjoined by this Court, will continue to cause substantial, immediate, and irreparable injury to Jelly Belly's business, reputation, and goodwill for which Jelly Belly is without an adequate remedy at law.

52. In addition, as a direct and proximate result of Defendants' violation of 15 U.S.C. § 1125(c), Jelly Belly has suffered and is continuing to suffer injury, loss and damages in an amount to be determined at trial.

53. As Defendants acted willfully and intentionally to trade on Jelly Belly's reputation and/or cause dilution of the JELLY BELLY Trade Dress and/or The JELLY BELLY Marks, including at least the marks that are the subject of U.S. Trademark Registration Numbers 2,695,195, 4,773,681, and 4,852,501, which were specifically identified in Jelly Belly's June 27, 2017 cease and desist letter, pursuant to 15 U.S.C. § 1125(c)(5), Jelly Belly is entitled to recover monetary damages, treble damages, disgorgement of Defendants' unlawful gains and profits, costs, and attorneys' fees, as well as the destruction of all labels, signs, packages, wrappers, receptacles, and advertisements related to the Accused Products which bear the JELLY BELLY Trade Dress and/or one or more of The JELLY BELLY Marks that are registered, including at least the marks that are the subject of U.S. Trademark Registration Numbers 2,695,195, 4,773,681, and 4,852,501.

IX. FOURTH CLAIM FOR RELIEF

(Common Law Unfair Competition)

54. Jelly Belly hereby repeats, realleges, and incorporates by reference Paragraphs 1-53 of this Complaint as though fully set forth herein.

55. Defendants' sale, use and/or imitation of the JELLY BELLY Trade Dress and The JELLY BELLY Marks, including at least the marks that are the subject of U.S. Trademark Registration Numbers 1,132,333; 1,203,786; 1,232,091; 2,695,195; 2,836,178; 3,732,866; 3,732,867; 3,735,357; 3,754,751; 4,773,681; and 4,852,501, constitutes infringement, copying, imitation, and misappropriation of Jelly Belly's intellectual property, unjust enrichment of Defendants, as well as unfair competition with Jelly Belly in violation of Jelly Belly's rights under the common law of the state of California and other states of the United States.

56. Defendants' willful conduct outlined herein has unjustly enriched Defendants in violation of Jelly Belly's rights.

57. Defendants, by their unfair competition, have caused and, unless preliminarily and permanently restrained and enjoined by this Court, will continue to cause substantial, immediate, and irreparable injury to Jelly Belly's business, reputation, and goodwill for which Jelly Belly is without an adequate remedy at law.

58. In addition, as a direct and proximate result of Defendants' unfair competition, Jelly Belly has suffered and is continuing to suffer injury, loss and damages in an amount to be determined at trial.

X. FIFTH CLAIM FOR RELIEF

(Dilution in Violation of California Business & Professions Code §§ 14247 and 14250)

59. Jelly Belly hereby repeats, realleges, and incorporates by reference Paragraphs 1-58 of this Complaint as though fully set forth herein.

60. The JELLY BELLY Marks, including at least the marks that are the subject of U.S. Trademark Registration Numbers 1,132,333; 1,203,786; 1,232,091; 2,695,195; 2,836,178; 3,732,866; 3,732,867; 3,735,357; 3,754,751; 4,773,681; and 4,852,501; as well as California Trademark Renewal Registration Numbers 19,975 and 104,651, are distinctive and famous throughout the United States, including in California, and internationally. After The JELLY BELLY Marks became famous, Defendants used, and continue to use, a mark in their advertising and/or on products they sell that is identical, virtually identical, or similar to one or more of The JELLY BELLY Marks, including at least the marks that are the subject of U.S. Trademark Registration Numbers 1,132,333; 1,203,786; 1,232,091; 2,695,195; 2,836,178; 3,732,866; 3,732,867; 3,735,357; 3,754,751; 4,773,681; and 4,852,501.

61. On information and belief, Defendants acted with knowledge of the fame and reputation of The JELLY BELLY Marks, including at least the marks that are the subject of U.S. Trademark Registration Numbers 2,695,195, 4,773,681, and 4,852,501, which were specifically identified in Jelly Belly's June 27, 2017 cease and desist letter, with the purpose of usurping such rights and to willfully and intentionally confuse, mislead, and deceive members of the public.

62. Defendants' actions have, and are likely to continue to, dilute the distinctive quality of The JELLY BELLY Marks, including at least the marks that are the subject of U.S. Trademark Registration Numbers 1,132,333; 1,203,786; 1,232,091; 2,695,195; 2,836,178; 3,732,866; 3,732,867; 3,735,357; 3,754,751; 4,773,681; and 4,852,501, and to lessen the ability of those marks to identify and distinguish Jelly Belly's products.

63. Defendants, by their violation of California Business and Professions Code §§ 14247 and 14250, have caused and, unless preliminarily and permanently restrained and enjoined by this Court, will continue to cause substantial, immediate, and irreparable injury to Jelly Belly's business, reputation, and goodwill for which Jelly Belly is without an adequate remedy at law.

64. In addition, as a direct and proximate result of Defendants' violation of California Business and Professions Code §§ 14247 and 14250, Jelly Belly has suffered and is continuing to suffer injury, loss and damages in an amount to be determined at trial.

XI. SIXTH CLAIM FOR RELIEF

(Unfair Competition in Violation of
California Business & Professions Code §§ 17200, *et seq.*)

65. Jelly Belly hereby repeats, realleges, and incorporates by reference Paragraphs 1-64 of this Complaint as though fully set forth herein.

66. Defendants' misconduct in trading upon Jelly Belly's goodwill and reputation constitutes unlawful, unfair, and fraudulent business acts or practices and unfair, deceptive, untrue, and/or misleading advertising, in violation of California Business and Professions Code §§ 17200, *et seq.*

67. As a direct and proximate result of Defendants' unfair, unlawful, and illegal business practices, Jelly Belly has suffered irreparable harm to its reputation and goodwill. As such, Jelly Belly is entitled to injunctive relief as set forth herein.

XII. SEVENTH CLAIM FOR RELIEF

(Trademark Counterfeiting Under 15 U.S.C. § 1114)

68. Jelly Belly incorporates by reference and realleges each of the allegations set

forth in Paragraphs 1-67 above as if set forth fully herein.

69. This is a claim for trademark counterfeiting arising under 15 U.S.C. § 1114.

70. Defendants have, in connection with selling, offering for sale, advertising, and/or promoting one or more of the Accused Products, as well as on one or more of the Accused Products themselves, including at least accused pillows, intentionally used in commerce, without permission from Jelly Belly, one or more of The JELLY BELLY Marks, including the mark that is the subject of U.S. Trademark Registration Number 4,852,501. Such use is likely to cause confusion, or to cause mistake, or to deceive.

71. Jelly Belly is informed and believes, and on that basis alleges, that Defendants have used the non-genuine marks in connection with their business knowing that the marks are counterfeit. Jelly Belly is informed and believes, and on that basis alleges, that the activities of Defendants complained of herein constitute willful and intentional trademark counterfeiting, and Defendants acted with an intent to unfairly compete against Jelly Belly, to trade upon Jelly Belly's reputation and goodwill by causing confusion and mistake among customers and the public, and to deceive the public into believing that Defendants or the Accused Products are associated with, sponsored by, or approved by Jelly Belly, when, in fact, they are not.

72. Jelly Belly is informed and believes, and on that basis alleges, that Defendants had actual knowledge of Jelly Belly's ownership and prior use of one or more of The JELLY BELLY Marks, including at least the mark that is the subject of U.S. Trademark Registration Numbers 4,852,501, and without the consent of Jelly Belly, have willfully and intentionally violated 15 U.S.C. § 1114. Jelly Belly is further informed and believes, and on that basis alleges, that this is an exceptional case within the meaning of 15 U.S.C. § 1117.

73. Defendants, by their trademark counterfeiting, have caused and, unless preliminarily and permanently restrained and enjoined by this Court, will continue to cause substantial, immediate, and irreparable injury to Jelly Belly's business, reputation, and goodwill for which Jelly Belly is without an adequate remedy at law.

74. In addition, as a direct and proximate result of Defendants' willful and intentional violation of 15 U.S.C. § 1114, Jelly Belly has suffered and is continuing to suffer injury, loss and damages in an amount to be determined at trial, and is entitled to recover monetary damages, disgorgement of Defendants' unlawful gains and profits, three times the monetary damages or profits awarded, whichever is greater, attorneys' fees, and costs or statutory damages.

XIII. PRAYER FOR RELIEF

WHEREFORE, Jelly Belly prays for judgment in its favor and against Defendants, including but not limited to, the following relief:

1. That the Court render a final judgment in favor of Jelly Belly and against Defendants on all claims for relief alleged herein;

2. That the Court render a final judgment that Defendants have willfully violated the provisions of 15 U.S.C. § 1114 by infringing Jelly Belly's trademark rights in one or more of The JELLY BELLY Marks, such as one or more of the marks that are the subject of U.S. Trademark Registration Numbers 1,132,333; 1,203,786; 1,232,091; 2,695,195; 2,836,178; 3,732,866; 3,732,867; 3,735,357; 3,754,751; 4,773,681; and 4,852,501;

3. That the Court render a final judgment that Defendants have willfully and intentionally violated the provisions of 15 U.S.C. § 1125(a) through their unlawful copying and use of the JELLY BELLY Trade Dress and one or more of The JELLY BELLY Marks, such as one or more of the marks that are the subject of U.S. Trademark Registration Numbers 1,132,333; 1,203,786; 1,232,091; 2,695,195; 2,836,178; 3,732,866; 3,732,867; 3,735,357; 3,754,751; 4,773,681; and 4,852,501;

4. That the Court render a final judgment that Defendants have willfully violated the provisions of 15 U.S.C. § 1125(c) by diluting the JELLY BELLY Trade Dress and one or more of The JELLY BELLY Marks, such as one or more of the marks that are the subject of U.S. Trademark Registration Numbers 1,132,333; 1,203,786; 1,232,091; 2,695,195; 2,836,178; 3,732,866; 3,732,867; 3,735,357; 3,754,751; 4,773,681; and 4,852,501;

5. That the Court render a final judgment declaring that Defendants' acts constitute common law unfair competition;

6. That the Court render a final judgment declaring that Defendants have willfully committed trademark dilution under California Business and Professions Code §§ 14247 and 14250;

7. That the Court render a final judgment declaring that Defendants' acts constitute unfair competition under California Business and Professions Code §§ 17200, *et seq.*;

8. That the Court render a final judgment that Defendants have willfully violated the provisions of 15 U.S.C. § 1114 by counterfeiting one or more of Jelly Belly's registered trademarks, such as the mark that is the subject of U.S. Trademark Registration Number 4,852,501;

9. A preliminary and permanent injunction enjoining Defendant Kess Global Inc., as well as Defendant Kess Global Inc.'s members, officers, principals, shareholders, agents, servants, employees, successors, assigns, distributors, retailers, those in privity with Defendant Kess Global Inc., and those persons in active concert or participation with any of them who receive actual notice of the judgment by personal service or otherwise, from any further infringement and/or dilution of the JELLY BELLY Trade Dress and The JELLY BELLY Marks and from any further acts of unfair competition, including without limitation, injunctive relief enjoining the sale and advertising of the Accused Products;

10. For an award of damages in an amount according to proof at trial;

11. For an award of enhanced damages in an amount according to proof at trial or statutory damages;

12. For an accounting to Jelly Belly for any and all profits derived by Defendants from the unlawful acts complained of herein, and for disgorgement of three times those profits;

13. For the destruction of all labels, signs, packages, wrappers, receptacles, and advertisements related to the Accused Products, as well as the Accused Products, which bear

the JELLY BELLY Trade Dress and/or one or more of The JELLY BELLY Marks that are registered;

14. For reasonable attorneys' fees;

15. For costs in this lawsuit;

16. For interest as allowed by law; and

17. For such further relief as the Court deems just and proper.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: July 21, 2017

By: */s/ Jonathan A. Hyman*
Karen Vogel Weil
Jonathan A. Hyman
Nathan M. Shaw

Attorneys for Plaintiff
JELLY BELLY CANDY COMPANY

JURY DEMAND

Pursuant to Fed. R. Civ. P. 38(b), Plaintiff Jelly Belly Candy Company demands a trial by jury of all issues raised by this Complaint that are triable by jury.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: July 21, 2017

By: */s/ Jonathan A. Hyman*
Karen Vogel Weil
Jonathan A. Hyman
Nathan M. Shaw

Attorneys for Plaintiff
JELLY BELLY CANDY COMPANY

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